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FEDERAL COMMUNICATIONS COMMISSION
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March 29, 1993

Ms. Donna Searcy
Secretary
Federal Communications Commission
Washington, D.C. 20554

Re: CC Docket No. 92-77 Billed Party Preference for 0+ InterLATA Calls

Dear Ms. Searcy:

Transmitted herewith for filing on behalf of LDDS Communications, Inc. are an original and the requisite number of copies of its reply to oppositions to petition for reconsideration in the above-captioned matter. If there are any questions, please communicate directly with the undersigned.

Sincerely,

Mitchell F. Brecher

Enclosures

8609-000

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Billed Party Preference	)	CC Docket No. 92-77
for 0+ InterLATA Calls	)	Phase I
	)	

REPLY TO OPPOSITIONS TO PETITION FOR RECONSIDERATION OF LDDS COMMUNICATIONS, INC.

LDDS Communications, Inc. ("LDDS"), by its attorneys, pursuant to Section 1.429(g) of the Commission's rules,[1] hereby replies to the oppositions to its petition for reconsideration filed in the above-captioned proceeding, and states as follows:

As a provider of interexchange telecommunications services, including operator-assisted calling services, LDDS and its affiliated companies have been harmed by the anticompetitive conduct engaged in by the American Telephone and Telegraph Company ("AT&T"), including the confusing and misleading information disseminated by it to consumers in connection with the distribution and marketing of millions of calling cards in the Card Issuer Identifier ("CIID") format. For that reason, LDDS supported the Commission's proposal to require issuers of such ostensibly "proprietary" calling cards either to limit use of those cards to access code dialing or to allow those cards to be validated and accepted by other carriers on a nondiscriminatory basis. Unfortunately, the Commission declined to adopt its own 0+ Public Domain proposal.[2] On January 11, 1993, LDDS petitioned the Commission for reconsideration of its decision not to adopt 0+ Public Domain. In its petition for reconsideration, LDDS demonstrated several reasons why the CIID Card Decision should be reconsidered. Specifically, it showed that the failure to implement 0+ Public Domain would

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1 47 C.F.R. § 1.429(g).

2 Billed Party Preference for 0+ InterLATA Calls (Report and Order and Request for Supplemental Comment), 7 FCC Rcd 7714 (1992) ("CIID Card Decision").

enable AT&T to continue to enjoy the competitive benefits of its own wrongful CIID card marketing practices and confusing and misleading card usage instructions. It further demonstrated that the so-called "proprietary" cards were not truly proprietary since access to the CIID card data base was available to hundreds of companies chosen by AT&T. Moreover, LDDS demonstrated that the Commission's decision not to impose any validation access obligations on the card issuer was irreconcilable with its previous decision in Docket No. 91-115 that access to a common carrier's validation data base is both a communication service within the meaning of Title I of the Communications Act and a common carrier service within the ambit of Title II of the Act. Finally, LDDS explained why the customer inconvenience and competitive inequities which already had resulted from the unrestrained proliferation of CIID cards would not be remedied by the customer education requirements imposed on AT&T by the Commission. Several parties have opposed LDDS's reconsideration petition. This reply shall be limited to refuting several of the substantive objections to LDDS's petition raised by its opponents.

I. AT&T HAS PROVIDED NO BASIS FOR DISTINGUISHING ITS VALIDATION OBLIGATIONS FROM THOSE OF OTHER COMMON CARRIERS BASED UPON THE COMMISSION's *VALIDATION ORDER*

In its Validation Order[3], the Commission concluded that access to local exchange carrier (LEC) validation data is both a communications service and a common carrier service, and that, as such, common carriers must make that access available in accordance with the statutory requirements applicable to all common carrier services in Title II of the Act. In its petition for reconsideration, LDDS applied the identical Title I and Title II analyses to IXC validation access as the Commission itself, only six months prior to the CIID Card Decision, had applied to LEC validation access. Applying the same factors, LDDS reached the same

3 Policies and Rules Concerning Local Exchange Carrier Validation and Billing Information for Joint Use Calling Cards (Report and Order and Request for Supplemental Comment), 7 FCC Rcd 3528 (1992).

conclusion: access to a common carrier's validation data base is both a communication service and a common carrier service.[4]

Now AT&T purports to "refute" that analysis by asserting that LECs in general, and the Bell Operating Companies (BOCs) in particular, have independent obligations since they provide "monopoly access service."[5] That assertion is unsupported and unsupportable. Contrary to AT&T's suggestion, nothing in the Commission's analysis of validation access set forth in the Validation Order supports a conclusion that the equal access requirements of the Modification of Final Judgment or any other "independent non-discrimination obligations" bore any relevance to the Commission's Title I or Title II analyses of LEC validation data access. In determining LEC validation access to be common carriage, the Commission applied the "holding out" standard set forth by the United States Court of Appeals for the District of Columbia Circuit in NARUC v. FCC.[6] Under that standard, common carrier obligations are applicable where a provider is under a legal compulsion to hold oneself out or if it does so without legal compulsion. Applying that test to validation, the Commission discussed the existence of market power caused either by a shortage of alternative suppliers or customers' inability to adequately represent their interests.[7] Nowhere in that analysis did the Commission address equal access or any of the unidentified "independent non-discrimination obligations" referenced by AT&T. Under the "holding out" test of common carriage established in NARUC, and applied by the Commission in the Validation Order, once AT&T held out the availability of access to its CIID card data base to some carriers, it became obligated as a common carrier to make that access available on a nondiscriminatory basis to all carriers.

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4 LDDS petition for reconsideration at 10-13. There, LDDS noted that the CIID Card Decision disregarded similar analyses of other commenting parties (LDDS petition at 13).

5 AT&T's opposition to petitions for reconsideration at 4 n. 9.

6 525 F.2d 630 (D.C. Cir.), cert. den. 425 U.S. 999 (1976).

7 Validation Order, supra at 3532.

II. 0+ PUBLIC DOMAIN WOULD NOT REQUIRE SPRINT OR SIMILARLY SITUATED CARRIERS TO ALLOW NONDISCRIMINATORY ACCESS TO THEIR DATA BASES

In its opposition, Sprint Communications Co. (Sprint) states that LDDS's definition of 0+ Public Domain would require all issuers of proprietary calling cards either to limit use of those cards to access code dialing or allow all other carriers to validate those cards. Sprint's concern is not well-founded. Unlike AT&T, Sprint's "proprietary" calling cards are truly proprietary. Whereas AT&T permits access to its so-called "proprietary" CIID card validation data base to hundreds of companies, including all of the nation's LECs, certain international carriers, and those selected interexchange carriers with whom it has chosen to do business, Sprint does not share access to its proprietary data base with any carriers.

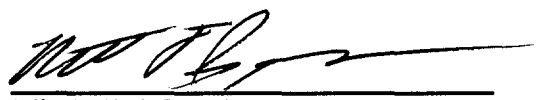
Application of the NARUC test of common carriage embraced by the Commission in the Validation Order would produce a different conclusion for Sprint's calling cards than for AT&T's CIID cards. Sprint has never held itself out to validate for any other carriers. Thus, it should not be subject to common carrier obligations regarding access to its calling card data base. In addition, Sprint, in contrast to AT&T, has never created either consumer confusion or competitive inequity problems by incorrectly instructing its cardholders to use 0+ access with its cards -- even from phones presubscribed to other carriers, nor has it directed consumers to destroy line-based cards which are usable with all carriers' services. For those reasons, LDDS' definition of 0+ Public Domain would not impose any requirements on Sprint or on other carriers whose calling card practices are comparable with those of Sprint.

CONCLUSION

As described herein, the oppositions to LDDS's petition for reconsideration provide no basis for the Commission not to reconsider its CIID Card Decision and to adopt its originally-proposed 0+ Public Domain policy. For the reasons discussed herein as well as those set forth in its petition for reconsideration, LDDS respectfully urges the Commission to reconsider its CIID Card Decision and to mandate a policy which prohibits AT&T or any other carrier which allows access to its validation data bases to any other carriers from discriminating against any carriers in the provision of that validation access service. The Commission should clarify that carriers may issue proprietary calling cards, but that once they allow those cards to be validated by other carriers, they are no longer entitled to proprietary status and that access to the card data base must be made available on a nondiscriminatory basis.[8]

Respectfully submitted,

LDDS COMMUNICATIONS, INC.



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March 29, 1993

8 Even if such calling cards were available for nondiscriminatory validation, they could still be used to place calls from public phones on a 0+ basis, irrespective of which carrier is the presubscribed carrier. However, LDDS believes that, once the validation discrimination problem is remedied, the marketplace would determine whether there should be 0+ calling cards.

CERTIFICATE OF SERVICE

I, Raina N. Price-Webster, do hereby certify that a copy of the attached REPLY TO OPPOSITIONS TO PETITION FOR RECONSIDERATION of LDDS Communications, Inc., which was filed with the Federal Communications Commission on March 29, 1993, has been served via first-class mail, postage pre-paid to the recipients on the attached pages.

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